

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.09.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Writ Appeal Nos.2818 of 2001 and 1172 of 2003

1. The State of Tamil Nadu
represented by its
Secretary to the Government
Industries Department
Fort St.George
Chennai - 600 009

2. The District Collector
Sivagangai District
Sivagangai

Appellants in
W.A.No.2818 of 2001

District Collector
Sivaganga District
Sivagangai

... Appellant in
W.A.No.1172 of 2003

vs.

M.Ramaswamy

Respondent in both W.As

Writ Appeal in W.A.No.2818 of 2001 is filed under clause 15 of the Letters Patent against the order dated 31.10.2001 made in W.P.No.14373 of 2001, The petition is presented to this Court under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to allot alternative sand quarry of 24.00.0 hectares either in S.No.263 out of the Total area of 50.67.5 hectares and in S.No.163 measuring 8.10.5 hectares situated in Seikalalathu Village the adjacent village of lease granted area of Kurangakottai Village.

Writ Appeal in W.A.No.1172 of 2003 is filed under clause 15 of the Letters Patent against the order dated 30.1.2003 made in W.P.No.21841 of 2001, The petition is presented to this Court under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to forbear from interfering with the petitioner's right to continue quarry operations in 0.82.5 Hectares comprised in S.No.200 of Kirungakkottai Village, Manamamadurai Taluk, Sivagangai District for a period of Five years from 23.04.2001.

For Appellants in both WAS : Mr.P.Subramanian,G.A.
For Respondent in both WAS : Mr.K.Ramakrishna Reddy

JUDGMENT

(Judgment of the Court was delivered by K.RAVIRAJA PANDIAN, J.)

The issue involved in these writ appeals is squarely covered by the Division Bench judgment of this Court dated 23.2.2007, made in W.P.No.28461 of 2003, wherein the Division Bench, following the judgment of the Supreme Court in the case of STATE OF TAMIL NADU VS. KRISHNAMURTHY reported in (2006) 4 SCC 517, has passed an order to the following effect:

"..... 2. Similar matter came up for consideration before the Supreme Court in the case of State of Tamil Nadu Vs. P.Krishnamurthy, reported in 2006-4-L.W.635, therein, while the Court upheld the validity of Rule 38A, which vests the exclusive right to quarry sand in the State Government and that part of Rule 38A, which purports to terminate quarrying leases/permissions, observed as follows:-

"26.In regard to mining leases subsisting as on 2.10.2003, we have read down Rule 38A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (respondents herein) whose leases were subsisting on 2.10.2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2.10.2003), whichever is less. This benefit will be available to even those who have orders of court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in Section 4A (2), by giving a notice and hearing under Section 4A(3), if they want to terminate any lease within the said period of six months.

27. We, accordingly, allow these appeals in part. In place of the conditions stipulated by the Division Bench while upholding the validity of Rule 38A, we hold and direct as follows:

(i) That part of Rule 38A which vests the exclusive right to quarry sand, in the State Government, is upheld.

(ii) That part of Rule 38A which purports to terminate quarrying leases/permissions forthwith (from 2.10.2003) is read down in terms of Para 26 above.

(iii) The provision in Rule 38A for refund of proportionate lease amount for the unexpired period of lease and unadjusted seigniorage fee, shall remain undisturbed.

(iv) It is made clear that except to the limited relief as a consequence of reading down as per para 26 above, the respondents will not be entitled to any other reliefs which have been granted by the High Court.

(v) Parties to bear their respective costs.

3. The present case being covered by the Supreme Court decision rendered in the case of State of Tamil Nadu Vs. P.Krishnamurthy, reported in 2006-4-L.W.635 (stated supra), this Writ Petition is also disposed of with same and similar terms. Consequently, the connected W.P.M.P.No. 34768 of 2003 is closed. There will be no order as to costs."

2. The Supreme Court in the above referred judgment granted relief to the lease holder and others which reads as under:

"In regard to mining leases subsisting as on 2-10-2003, we have read down Rule 38-A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (the respondents herein) whose leases were subsisting on 23-10-2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2-10-2003), which ever is less. This benefit will be available to even those who have orders of the court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in Section 4-A(2), by giving a notice and hearing under Section 4-A(3), if they want to terminate any lease within the said

period of six months."

(emphasis supplied)

3. Here in this case also, the appellant has obtained an order from this Court for alternative site. However, lease deed was not executed. Therefore, in the light of the judgments of the Supreme Court and the Division Bench of this Court, we are of the view that the appellant is entitled to the relief as ruled out by the Supreme Court, which we have extracted above.

4. With this observation, the writ appeals are allowed to that extent on similar terms as held by the Supreme Court. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to the Government
Industries Department
State of Tamil Nadu
Fort St.George
Chennai - 600 009

2. The District Collector
Sivagangai District
Sivagangai

2 cc To Mr.K.Ramakrishna Reddy, Advocate, SR.59962, 59963.
1 cc To The Government Pleader, SR.60136.

WA.Nos.2818 of 2001 and 1172 of 2003

AKR(CO)
RVL 15.10.2007

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